*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.9736 of 1997

% 15-02-2005

D.Satyanarayana S/o Venkaiah

Occ: Ex-President, Gundala PACS, Khammam District.

.... PETITIONER

AND

$ The Government of Andhra Pradesh, rep.by its Secretary,

Co-operation Department, Secretariat Buildings, Hyderabad and others.

...RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Mr.Nagaraju & Mr.A.Satya Prasad

^ Counsel for the respondents : Government Pleader for Cooperation

?CASES REFERRED :

Nil

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITION NO: 9736 of 1997

Between:

D. Satyanarayana S/o Venkaiah
Occ: Ex-President, Gundala PACS, Khammam District.

.... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep by its Secretary,
Co-operation Department, Secretariat Buildings,
Hyderabad.
2 The District Collector (Co-operation)
Khammam Dist. Khammam
3 The District Co-operative Officer
Khammam Khammam District
4 The Divisional Co-operative Officer
Bhadrachalam Division, Khammam Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the impugned Proceedings in Rc No.1366/88-C dated 9-11-1992 on the file of the 2nd respondent herein and set aside the same as illegal, arbitrary and without jurisdiction on part of the 1st respondent herein and violative of principles of natural justice apart from violative of Article 21 of the Constitution of India and also contrary to the provisions of the A.P. Cooperative Societies Act and pass such other order or orders as it may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.Nagaraju for MR.A.SATYA PRASAD

Counsel for the Respondents: GP FOR COOPERATION

The Court made the following:

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ORDER:

D.Satyanarayana, the writ petitioner, filed the present writ petition praying for the issuance of a Writ, order or direction, more particularly one in the nature of Writ of *Mandamus* declaring the impugned proceedings in Rc.No.1366/88-C, dt.9-11-1992 on the file of the second respondent, the District Collector (Co-operation), Khammam District, Khammam and set aside the same as illegal, arbitrary and without jurisdiction being violative of principles of natural justice and also violative of Article 21 of the Constitution of India and contrary to the provisions of A.P. Cooperative Societies Act, 1964 (hereinafter referred to as "the Act" for the purpose of convenience) and pass suitable orders.

2. The impugned order made by the District Collector (Cooperation), Khammam District, Khammam, the second respondent herein, reads as under:

> "In the circumstances reported in the ref. read above prosecution is hereby sanctioned U/S.83(3) of the APCS Act against Shri

D.Satyanarayana Ex.President, Shri K.Prakasha Rao, Ex-Secretary and Shri M.Narasimha Rao, Ex-Clerk, of PACS, Gundala for misappropriation of funds of the Society authorizing the Divil. Coop. Officer, Bhadrachalam to file the criminal complaint with the Station House Officer, concerned against the delinquent".

3. Interim suspension was granted and the respondent filed W.V.M.P.No.2866 of 1997 to vacate the interim order.

4. Specific stand was taken in the counter affidavit that the second respondent, District Collector, Khammam District, Khammam has authority and jurisdiction to make such an order, which has been impugned in the writ petition.

5. Mr.Nagaraju, learned counsel representing the writ petitioner had pointed out that the writ petitioner is Ex-President of the Cooperative Society, Gundala PACS, and surcharge notice was issued and in fact, the writ petitioner submitted the explanation and some amount was found due and in fact, the writ petitioner also had paid the amount. Learned counsel would submit that the Ex-President does not fall under 'Public Servant' within the meaning of Section 21 of Indian Penal Code. The learned counsel also pointed out that Section 83(3) of the Act was not there on the Statute book when the impugned order was made. Apart from this aspect of the matter, learned counsel also would contend that delegation of powers were only to the limited extent, and at any rate, the powers of the Registrar had not been conferred on the second respondent; in this regard, and in this view of the matter also, the impugned order made by the second respondent is without jurisdiction. Learned counsel placed strong reliance on a decision of this Court in W.P.No.3887 of 2001, dated 08.03.2001 and also the decision made by the Division Bench in W.P. No.13878 of 1998 and W.A.No.758 of 1999, dated 22.01.2003.

6. Per contra, learned Government Pleader for Cooperation had taken this Court through the counter affidavit and submitted that in the light of Sections 83(3) and 130 of the Act, the second respondent has power and authority to make the impugned order. Learned counsel also would comment that the very fact that the amount had been paid would not alter the situation in any way. The learned counsel had taken this Court through the contents of the counter affidavit in this regard.

7. Heard both the counsel and also perused the material available on record. The writ petitioner was president of Gundala PACS in the year 1983 and that there was an inquiry under Section 51 of the Act into the affairs of the said society. The Deputy Registrar of Cooperative Societies, Bhadrachalam on receipt of the enquiry notice, dated 22.08.1980 issued show cause notice to the writ petitioner under Section 60 of the Act calling upon the petitioner to submit explanation by alleging that the writ petitioner managed to draw a sum of Rs.16,100/- being the amount of pre-occupant sanctioned. Thereafter, the Deputy Registrar of Bhadrachalam issued surcharge proceedings under Section 60(1) of the Act fixing the liability of the writ petitioner at Rs.4,611.26 ps. along with interest from 28.3.1984. It is stated that the writ petitioner had paid surcharge amount immediately. It is further stated that all of a sudden, the second respondent issued impugned proceedings Rc.No.1366/88-C, dated 9-11-1992, which are referred to surpa, sanctioning prosecution against the writ petitioner under Section 83(3) of the Act. It is stated that Section 83 of the Act deals with constitution of Special Court and there is no sub-section to Section 83 of the Act. It is further stated that Chapter XII deals with the offences and penalties and the said chapter has no application to the impugned action. The surcharge proceedings relate to the affairs of the society in the year 1980 and the proposed prosecution was sought to be initiated in the year 1992, after a long lapse of time. It is also stated that the writ petitioner is of 75 years old, and to accord sanction for prosecution after a long lapse of time despite the fact that the writ petitioner had already paid the amount is arbitrary, illegal and also violative of Article 21 of the Constitution of India and in contravention of the provisions of the Act.

8. In the counter affidavit filed, it is stated that on the strength of the Enquiry Report conducted U/S 51 of the Act and suggestion made by the Enquiry Officer vide his Enquiry Report dated 22.08.1980 to take criminal action against the petitioner and two others involved in misappropriation of funds in PACS Gundala, proposals have been submitted by the 4th respondent vide Rc.No.3144/78-D, dated 25.5.1992 to third respondent to accord permission for sanction of prosecution against the delinquents. The matter has been referred to police Prosecuting Officer, Khammam by the third respondent, vide Rc. No. 1366/88-C, dated 14.7.1992 to obtain his opinion for sanction of prosecution against the petitioner and two others at his length

of time. The police Prosecuting Officer (Admn.), Khammam has opined in his Rc.NO.202 (PPO.KM/92), dated 8.10.1992 that for the both offence under Section 409 I.P.C if the individuals are defined as Public Servants or U/S 408 I.P.C., if the offence is committed other than but the public servant the punishment is more than three years. Where the punishment is more than three years U/S.468 Cr.P.C., there is no limitation of time for filing prosecution against the individuals for the embezzlement of Society's funds. In view of the above as an Executive Magistrate of the District, the said proposals have been placed before the District Collector, i.e., 2nd respondent and obtained consent of the District Collector and issued administrative sanctioning of the prosecution vide Proceedings Rc.No.1366/88-C, dt.9.11.1992 authorizing the 4th respondent to file criminal complaint against the delinquents including the petitioner in this writ petition by virtue of powers conferred by the Government to the District Collector under G.O.Ms.No.2351,Food & Agrl. (Coop.II) Department dt.10.11.67.

9. Further specific stand was taken that as per the opinion of the Police Prosecuting Officer, Khammam, the petitioner is liable for punishment for the offence of misappropriation of Society funds committed U/S 406 I.P.C in the Gundala PACS. It is also stated that the proposals received from 4th respondent vide Rc.No.3144/78-D, dt.25.5.92 and on the opinion of the Police Prosecuting Officer, Khammam issued in Rc.No.202/PPO-KM/92, dt.8.10.92 as an Executive Magistrate of the District; the proposals have been placed before the District Collector, i.e. 2nd Respondent and obtained consent of the District Collector U/S./83 of A.P.C.S. Act 1964 and accorded permission to the 4th Respondent vide Proc.Rc.No.1366/88-C,dt.9.11.92 who is vested with powers of Registrar in respect of Primary Agrl. Cooperative Societies in terms of G.O.Ms.No.34 Food and Agrl. (Coopn. IV) Department, dt.18.1.89. The above proceedings were issued prior to establishment of Special Courts U/S 83 of A.P.C.S Act 1964 vide G.O.Ms.No.161 Agrl. & Coopn. (Coop.IV) Department, dt.11.3.93.

10. Specific stand was taken that the delay is only administrative delay and

inasmuch as the question of limitation is not involved, the second respondent issued the sanction order on 9.11.1992, which is within the authority and jurisdiction of R.2. Further, it was stated that under Section 130 of the Act, the Government is having powers to make rules by notification published in the A.P. Gazette for carrying out all or any of the purposes of this Act for the whole or any part of the state and for any class of society and hence, the second respondent is having powers to accord sanction for launching prosecution against an employee of Society which was made a provision in the Act in view of Section 83, read with G.O.Ms.No.2351, dt.10.11.1967. Further, it was stated that the first respondent is having powers under Section 3 of the Act to appoint the Registrar of Cooperative Societies of the State or any number of Registrars, which are necessary by the Government, accordingly vide G.O.Ms.NO.34 Food & Agriculture (Coop.IV) Department dt.18.1.89.

11. In the light of the respective stands taken by the writ petitioner and the respondents, the principle question which falls for consideration is whether the impugned action of the second respondent suffers from jurisdictional flaw as contended by the writ petitioner. No doubt, incidentally, certain other grounds had also been urged in this regard. The impugned order is dated 9.11.1992. Section 83 of the Act dealt with cognizance of offences as it originally stood. Sub-section (3) of Section 83 of the Act read : “No prosecution shall be instituted under this Act without the previous sanction of the Registrar”. However, Section 83 was substituted by Act 15 of 1991, which reads as hereunder:

> 83.**Constitution of Special Courts**:- The Government may, for the purpose of providing speedy trial of the offences under this Act, or for, any offence committed by an officer, employee or any member of the society punishable under the Indian Penal Code, 1860, by notification, in the Andhra Pradesh Gazette constituted as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

12. It is true as on the date of the impugned order, sub-section (3) was not there on the Statute book by virtue of the Amendment Act No.15 of 1991. However, Section 83 was substituted again by Act No.22 of 2001, which reads as hereunder:

> “83.**Cognizance of Offences**:- (1) No Court inferior to that of a Magistrate of the first class or a Metropolitan Magistrate shall try any offence under this Act.

(2) Every offence under this Act shall, for the purpose of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), be deemed to be cognizable.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar].

13. Hence, in the light of the statutory provisions referred to supra, evidently the second respondent could not have exercised this power under Section 83(3) of the Act on the relevant date, a non existing provision. Be that as it may, even on the aspect of according sanction, strong reliance was placed on the decision of this Court in W.P.No.3887 of 2001, the decision of single Judge and W.P.No.137878 of 1998 and W.A.No.758 of 1999, the decision of the Division Bench dealing with this aspect.

14. Section 3 of the Act reads as hereunder:

"**Appointment of Registrar and other persons for the purpose of this Act**:- (1) There shall be appointed a Registrar of Co-operative Societies for the State and as many other persons as the Government think fit for the purpose of this Act.

(2) Every other person appointed under sub-section (1) shall exercise under the general superintendence of the Registrar, such powers of the Registrar, under this Act as the Government may, from time to time, confer on him."

15. No doubt, reliance was also placed on Section 130 of the Act, which deals with power to make rules. There cannot be any doubt or controversy as far as this aspect is concerned. There is no specific delegation of powers conferred on the second respondent and hence, viewed from any angle and also in the light of the decisions referred to supra and the statutory provisions mentioned above, which had been amended from time to time, this Court is of the concerned opinion that the impugned action cannot be sustained, and the same is liable to be quashed.

16. Accordingly, the writ petitioner is bound to succeed. The writ petition is hereby allowed. No order as to costs.

P.S.NARAYANA, J

Dated :15.02.2005

Note:- L.R Copy to be marked (B/o) RAR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Fifteenth day of February, Two thousand and Five.

REGISTRAR

*** One Fair copy to the Hon'ble Mr.Justice P.S.Narayana**

(For His Lordship's kind perusal)

To

1 The Secretary, Government of Andhra Pradesh
Co-operation Department, Secretariat Buildings,
Hyderabad.
2 The District Collector (Co-operation)
Khammam Dist. Khammam
3 The District Co-operative Officer
Khammam Khammam District
4 The Divisional Co-operative Officer
Bhadrachalam Division, Khammam Dist.

5 2 CCs to G.P for Cooperation, High Court Bldgs,

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